Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction

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Consideration of the full range of approaches and options to further strengthen the Convention and its functioning through possible additional legal measures or other measures in the framework of the Convention

Investigation framework to strengthen the Biological Weapons Convention

Submitted by Japan

I. Introduction

1. The Biological Weapons Convention (BWC) bans the development, stockpiling, transfer, and use of biological weapons, but it does not include measures to ensure compliance by States Parties. Efforts had been devoted to establish a verification mechanism. However, its development in the form of the Protocol had failed when the negotiation proved difficult.

2. States Parties have not been able to overcome the dichotomy between the desirability of the formal verification and its unfeasibility. Continuous deliberation on this issue would be worthwhile, but it might be difficult to find the hope for moving forward, if we proceed based on the past protocol negotiation. Therefore, this working paper proposes what can be discussed in a more creative manner in order to avoid this impasse.

II. Issues on the verification mechanism

3. In an effort to strengthen the BWC, Ad Hoc Group was established to negotiate the Protocol to prevent and identify the violation of the BWC in 1994. The negotiation of many years understandably came to an end with the complexity of many issues and concerns.

4. One of the issues for the verification is related to the lack of effectivity. For example, (1) some dangerous biological pathogens or toxins can be used to make vaccines or for therapeutic and research values. Given the dual-use nature of biotechnology

activities, the intention of the use of them may not be subject to the objective assessment. Also, (2) it does not take time to culture a sample of the microorganisms until enough is grown to produce a weapon and detecting the biological weapons is becoming more difficult, if not impossible. Lastly, (3) traces of biological weapons can be easily eliminated and evidence of biological weapons may not be found even by short-notice inspection.

5. In addition to the efficiency issues, there is a concern that visits to declared facilities may burden the relevant industries and jeopardize legitimate commercial interests without detecting any violations. National security and commercial confidential information could also be threatened by a broad range of ineffective inspections.

6. Based on the limit of the progress, various proposals to strengthen the compliance of the BWC have been suggested such as national implementation measures and international cooperation. Confidence Building Measures (CBMs) has also been highlighted as an alternative measure and States Parties have been encouraged to submit CBMs to enhance transparency and confidence. However, legally binding measures including verification have still been sought to possibly strengthen the BWC. On the other hand, specific measures which are effective and acceptable to many countries have not been proposed.

III. Investigation Framework

7. At the 2017 Meeting of States Parties, the mandate for the intersessional programme 2018-2020 was adopted and "Institutional Strengthening of the Convention" was included among the five topics to be discussed. Taking this momentum, it is crucial to identify commonly acceptable ways to achieve progress.

8. The issues on the verification mechanism in Paragraph 2 relate to the problem that verification measures such as report and sight visit for declared facilities may not be enough to build transparency and confidence to the BWC in order to prevent or reduce the risk of the occurrence of the breach. For this reason, it has been thought that permanent and comprehensive verification could be ineffective as a preventive measure.

9. However, it does not lead to the fact that States Parties would be inactive even in the cases where suspected violation of the Convention, namely, development, production and stockpiling of the biological weapons or their use arises. Because these cases could pose an imminent threat to the international society, State Parties should recognize the necessity of investigation into such allegation.

10. Many points are open to discussion on such investigation. For example, we have to deliberate on what kind of roles relevant oganizations should play, on what kind of existing mechanism can be effective or strengthened, and if States Parties of the BWC can take any significant roles within the framework of BWC.

IV. Conclusion

11. A permanent and continuous verification mechanism to prevent potential breach of the BWC and use of biological weapons has been proved difficult at best. However, it would be more productive to discuss on roles of States Parties and international organizations in responding to deliberate public health emergencies. We need to make concrete progress for building and strengthening a realistic investigation framework in the future BWC meetings and many effective components such as the United Nations Secretary-General's Mechanism and cooperation between States Parties and relevant international organizations should be incorporated into the framework.

12. Building effective counter-measures against actual use of biological weapons is one of the ways to reinforce the compliance of the BWC and can be discussed in the topic of the Institutional Strengthening of the Convention. This also matches the UN Secretary General's agenda entitled 'Securing our Common Future: An Agenda for Disarmament' which emphasizes the importance of a core standing coordinating capacity to conduct independent investigations and a framework that ensures a coordinated international response in the case of the use of biological weapons.